

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Conference on Accounting Issues)	WC Docket No. 02-269
)	
2000 Biennial Regulatory Review--Comprehensive)	
Review of the Accounting Requirements and)	
ARMIS Reporting Requirements for Incumbent)	CC Docket No. 00-199
Local Exchange Carriers: Phase II)	
)	
Jurisdictional Separations Reform and Referral to the)	CC Docket No. 80-286
Federal-State Joint Board)	
)	
Local Competition and Broadband Reporting)	CC Docket No. 99-301

**COMMENTS OF THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The Public Service Commission of Wisconsin (Wisconsin Commission) respectfully files these comments in response to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM) adopted December 17, 2003, and released December 23, 2003, concerning the above-referenced dockets. Many of the Wisconsin Commission's comments contained herein reiterate its previous comments filed with the FCC on this subject.

Introduction

In 1999, the FCC initiated a two-phased comprehensive review of its accounting rules and the related reporting requirements for incumbent local exchange carriers (ILECs) in an effort to keep pace with changing conditions in the competitive telecommunications industry. In Phase 1 (or I), which concluded with the *Phase 1*

Report and Order,¹ the FCC adopted Part 32 accounting rule changes and reporting reform measures for the Automated Reporting Management Information System (ARMIS) that could be implemented quickly. After reviewing the issues and the accounting and reporting rules, the FCC realized that the comprehensive review required more than the two-phased process initially contemplated. In the NPRM adopted in the proceeding, the FCC commenced Phase 2 (or II) to seek comment on further accounting and reporting reform measures that may be implemented in the near term, and Phase 3 (or III) to consider the appropriate indicia for more significant deregulation in this area. On November 5, 2001, the FCC issued its *Phase II Accounting Order*² with further changes to its accounting and reporting rules. At the same time the FCC issued its *Phase III Further Notice*.³ Additionally, the FCC requested comments at a later date to refresh the record in those proceedings.

Based on increased public concern over the adequacy of financial accounting, on September 5, 2002, the FCC issued an Order convening a Federal-State Joint Conference on Accounting Issues (Joint Conference) to provide a means of evaluating whether regulatory accounting and reporting requirements are adequate and effective in the

¹ Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1, CC Docket No. 99-253, *Report and Order*, 15 FCC Rcd 8690 (2000) (*Phase I Report and Order*).

² In the Matter of 2000 Biennial Regulatory Review--Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 (CC Docket No. 00-199), Amendments to the Uniform System of Accounts for Interconnection (CC Docket No. 97-212), Jurisdictional Separations Reform and Referral to the Federal-State Joint Board (CC Docket No. 80-286), and Local Competition and Broadband Reporting (CC Docket No. 99-301), Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, and Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, adopted October 11, 2001, and released November 5, 2001. An errata order in these same dockets was adopted and released by the FCC on January 17, 2002, and January 18, 2002, respectively. An Order on Reconsideration in CC Docket No. 00-199 was adopted and released by the FCC on March 6, 2002, and March 8, 2002, respectively. On November 8 and 12, 2002, respectively, the FCC adopted and released an order in WC Docket No. 02-269 and CC Docket Nos. 00-199, 80-286, and 99-301.

³ *Ibid.*

current market to both protect consumers and carry out federal and state regulatory responsibilities. Additionally, on November 12, 2002, the FCC suspended the implementation of certain requirements that were adopted in the *Phase II Accounting Order* to allow review of these changes by the Joint Conference.⁴

On December 12, 2002, the Joint Conference issued a public notice in WC Docket No. 02-269, seeking comments regarding the *Phase II Accounting Order* and the *Phase III Further Notice*, as well as additional questions regarding broader issues not yet addressed in the FCC's three-phase proceeding.

On October 9, 2003, the Joint Conference submitted the result of its year-long study. The FCC subsequently issued its NPRM requesting comments on this study.

Discussion

The Wisconsin Commission has previously filed comments in Phases I, II, and III of the FCC's comprehensive review proceeding as well as providing further Phase II and Phase III comments as requested. Additionally, on December 20, 2002, the Wisconsin Commission issued its Final Decision in docket 05-US-113, which considered revisions to the Wisconsin Commission's Uniform System of Accounts (USOA) effective January 1, 2003, in light of the FCC's *Phase II Accounting Order*. The Wisconsin Commission's Final Decision also indefinitely suspended the items which the FCC suspended in its November 12, 2002, and subsequent orders.

The Wisconsin Commission submits these comments on selected accounting and reporting issues contained in the Joint Conference's study. The Wisconsin Commission will also describe selected items from its Final Decision.

⁴ Subsequent FCC orders further suspended implementation through June 30, 2004.

The Wisconsin Commission believes that the Joint Conference should be commended for its efforts on this subject. Likewise, the FCC should be applauded for its solicitation of comments on the associated study, which in many respects considers the interests of state regulatory commissions. The need for uniformity between the federal system of accounts and those systems of accounts adopted by respective state commissions should be recognized, in order to consider the regulatory needs of the state commissions but also to minimize the regulatory burden on carriers subject to the system of accounts.

General Comments on Accounting and Reporting Issues

As evidenced by the Wisconsin Commission's Final Decision in docket 05-US-113, the Wisconsin Commission recognized the importance of conforming the USOA utilized by this state commission to the USOA adopted by the FCC and has made only limited modifications between the two systems of accounts to limit the regulatory burdens on providers. The Wisconsin Commission agrees with the FCC that the focus of telecommunications regulation has changed over time, from an era primarily of rate-of-return regulation when the Part 32⁵ USOA was initiated on January 1, 1988, to an environment focused on local competition, universal service, and deployment of advanced services. Likewise, regulation at the state level has changed over time from rate-of-return regulation to a mixture of rate-of-return, alternative, and price regulation. The Wisconsin Commission agrees that the USOA should periodically be revised to address changes in the marketplace and in technology. In prior comments, the Wisconsin Commission has supported eliminating many accounts and subaccounts no longer needed in today's changing regulatory environment, while also advising that the FCC consider

⁵ Hereinafter references to Part 32 on sections herein are deemed to refer to 47 C.F.R. Part 32.

adding new accounts as described therein. In light of the much-publicized telecommunications and other entities' financial record keeping events of the recent past, the Wisconsin Commission shares the concern that reporting should be adequate, truthful, and thorough to support investor confidence in financial reporting.

In responding to the particular questions regarding the retention of specific accounts, the Wisconsin Commission cannot commit with certainty to whether it will conform to whatever decisions the FCC makes for these accounts. However, the Final Decision in docket 05-US-113, does provide some guidance in regard to the Wisconsin Commission's possible actions. The Wisconsin Commission determined that it has three hierarchies for possible levels of state accounting/reporting requirements. First, the Wisconsin Commission could establish different accounts/subaccounts or definitions than the FCC, but recognize that such a requirement would require ILECs to maintain a separate set of books and/or side records with corresponding costs. Second, in lieu of an account/subaccount requirement, the Wisconsin Commission could create an informal reporting requirement that the information should be reported in the ILEC annual report filed with the Wisconsin Commission. Third, the Wisconsin Commission could require ILECs, in some instances, to retain certain information for a 6-year time period, in order that ILECs be able to respond in the future to data requests from the Wisconsin Commission.

Questions Posed in the FCC's NPRM

1. Whether the FCC should reinstate Account 5230, Directory revenue.

The Wisconsin Commission supports the Joint Conference's recommendation to retain Account 5230. The Wisconsin Commission has retained this account for Class A

ILECs because the FCC suspended its proposed deletion of this account in its November 12, 2002, and subsequent orders. The State of Wisconsin does have specific statutory requirements related to directory revenues as follows: “The commission may attribute revenues derived from the sale of directory advertising or directory publishing rights to the regulated activities of a telecommunications utility for rate making and other utility purposes.”⁶ Directory revenues are currently one of the largest components of the Miscellaneous Revenues category. Account 5230 is necessary for continued enforcement of Wis. Stat. § 196.204(2) concerning cross-subsidy. A data retention requirement was prescribed by the Wisconsin Commission for Class B ILECs⁷ in its docket 05-US-113, Final Decision. In light of its materiality and the Wisconsin Commission’s specific statutory requirements, the Wisconsin Commission would prefer that this account be reinstated.

2. Whether the FCC should maintain the disaggregation of Account 6621, Call Completion Services, Account 6622, Number Services, and Account 6623, Customer Services, or consolidate Accounts 6621 through 6623 into Account 6620 (Services) and create wholesale and retail subaccounts for the newly consolidated account.

The Wisconsin Commission supports the consolidation and creation of new retail and wholesale subaccounts. As the FCC has suspended the consolidation of the accounts in its November 12, 2002, and subsequent orders, the Wisconsin Commission has retained Accounts 6621 through 6623. Consolidation and creation of wholesale and retail subaccounts would provide useful information that will be needed on an ongoing basis in light of the requirements of the Telecommunications Act of 1996. This information is

⁶ Wis. Stat. § 196.204(2).

⁷ Class B ILECs are currently defined by the Wisconsin Commission in its prescribed USOA as ILECs that have or are affiliated with a holding company that has a combined total access lines in Wisconsin less than 50,000 access lines. This number of access lines is specified in Wis. Stat. § 196.01(8). Approximately 45 of the 80-plus ILECs in Wisconsin are currently classified as Class B, with the remainder classified as Class A.

needed to determine the appropriate discount based on avoided retail costs for setting resale rates, and the appropriate mark-up for joint and common costs in determining the rates for unbundled network elements (UNEs).

The appropriate definitions of retail, joint, and common costs may not be well enough established at this time to be codified into account descriptions needed to create new accounts. As an example, in the Wisconsin Bell, Inc., d/b/a SBC Wisconsin (SBC), UNE pricing docket (Wisconsin Commission docket 6720-TI-161), in order to determine the wholesale mark-up, the Wisconsin Commission found that it needed information regarding what costs were directly related to the provisioning of wholesale service and what costs were competition implementation costs. The Wisconsin Commission considered that costs that were incurred in contentious proceedings regarding product definitions necessary to comply with the FCC rules were competition implementation costs. SBC had proposed such costs should be borne solely by wholesale customers as joint costs. The Wisconsin Commission determined these costs should be considered common costs and shared by all users of the network. If new accounts are not established, there will, in the future, be a continuing need for extensive information to be obtained through data requests. Additionally, the development of UNE rates may not be handled consistently throughout the country.

In the alternative, if retail and wholesale subaccounts are not created, ILECs should report in ARMIS the respective wholesale and retail amounts on an individual state basis for disaggregated accounts 6621-6623.

3. *Whether the FCC should maintain the disaggregation of the following accounts or, in the alternative, consolidate these accounts:*

- 6561 *Depreciation Expense-Telecommunications Plant in Service*
- 6562 *Depreciation Expense-Property Held for Future Telecommunications Use*
- 6563 *Amortization Expense-Tangible*
- 6564 *Amortization Expense-Intangible*
- 6565 *Amortization Expense-Other*

The Wisconsin Commission supports the retention of these accounts. The Wisconsin Commission has expressed concerns that transactions related to Property Held for Future Telecommunications Use remain separately identified in light of the different treatment in earnings monitoring and rate-of-return proceedings when they occur. In addition, determining depreciation rates remains a statutory requirement for the Wisconsin Commission. Per Wis. Stat. § 196.09(9),⁸ the Wisconsin Commission is required to revise depreciation rates for telecommunications utilities on a biennial basis. These rates have been used in proceedings to determine UNE rates. In its docket

⁸ Wis. Stat. § 196.09(9) states:

- (a) 1. The commission shall create by order guidelines establishing classes of fixed capital that telecommunications utilities use for public utility purposes, a range of annual depreciation rates for each of those classes and a composite range of annual depreciation rates for all classes of fixed capital.
- 2. The commission shall review biennially the guidelines established under subd. 1., except that if the commission receives, more than 365 days before the deadline for a biennial review, a written request from a telecommunications utility for a review, the commission shall review the guidelines no later than 365 days after receiving the request.
- (b) The commission shall determine that an annual depreciation rate is just and reasonable if the rate falls within the range established for that class under par. (a) 1., if the composite annual depreciation rate falls within the composite range established under par. (a) 1. for all classes of fixed capital or if the commission previously determined that the rate is just and reasonable.
- (c) A telecommunications utility may implement an annual composite depreciation rate, for all classes of fixed capital that is outside the range established under par. (a) 1. by filing the rate with the commission. The proposed annual composite depreciation rate shall be effective on the date specified in the filing but not sooner than 90 days from the date of filing with the commission, unless any of the following occurs:
 - 1. During the 90-day period the commission determines that the rate is not just and reasonable or in the public interest.
 - 2. The commission directs that the depreciation rate be made effective at an earlier date.

05-US-113, Final Decision, the Wisconsin Commission decided that while the FCC USOA does not require maintenance of these accounts for Class B ILECs, this Commission would require Class B ILECs to report this information in the ILEC annual reports filed with the Wisconsin Commission. The Wisconsin Commission would prefer that these accounts be maintained.

4. *Whether the FCC should add any of the following accounts to the USOA, including:*

Optical Switching
Switching Software
Loop and Interoffice Transport
Interconnection-Revenue (with subaccounts for UNEs, Resale, Reciprocal Compensation, and Interconnection Arrangements)
Universal Service Support Revenue
Universal Service Support Expense

In its Phase II comments, the Wisconsin Commission supported the creation of new plant, revenue, and expense accounts. In its docket 05-US-113, Final Decision, the Wisconsin Commission adopted a 6-year data retention requirement for selected revenue accounts. The Wisconsin Commission also adopted separate reporting in its ILEC annual report for selected revenue items to the extent necessary to allow the identification of assessable revenues for remainder, intrastate telephone relay, and intrastate universal service fund (USF) assessments, and for other items to perform small ILEC equity-thin and earnings reviews. The Wisconsin Commission further stated that while it did not adopt additional expense accounts at this time, such proposals may include worthwhile goals and that its current decision in docket 05-US-113 did not preclude the Wisconsin Commission from pursuit of these issues at a later date or in another forum, such as in comments filed with the FCC.

The Wisconsin Commission supported the creation of an Optical Switching account in its Phase II comments, as it would provide data regarding the extent of deployment of advanced services. There may also be future concerns concerning depreciation rates associated with such new technologies.

With regard to the issue of a separate account(s) for Switching Software, such requirement could extend to both plant and expense accounts, in that some switching software is capitalized while some is expensed. Prior to classification of switching software in account 2690, Intangibles, the Wisconsin Commission prescribed a distinct depreciation rate for switching software. The magnitude of the switching software recorded in account 2690 and/or expensed by respective ILECs may warrant consideration of a separate account or subaccount for this item.

The Wisconsin Commission did previously comment on traffic sensitive versus nontraffic sensitive costs. Since that time the Commission found in the SBC UNE pricing docket that the determination of traffic sensitive versus nontraffic sensitive may vary from company to company based on the manner in which a particular company incurs its costs. Based on SBC's switching contracts, the Wisconsin Commission decided to flat rate unbundled local switching for the company. Accordingly, traffic sensitive versus nontraffic sensitive distinctions would probably not be adequately captured in account descriptions.

With regard to Loop and Interoffice Transport, the Wisconsin Commission did not find that it needed accounting data to determine unbundled local loops or unbundled local transport rates in the SBC UNE pricing docket. Contract prices and model algorithms were primarily inputs that were needed to determine compliance with Total

Element Long Run Incremental Cost (TELRIC) pricing standards. However, to the extent ILECs claim that the rates for UNEs as developed from these models do not cover their accounting costs, they would need data separating loop costs from transport costs to make comparisons to accounting costs. Other adjustments, such as computing levelized costs like annual lease payments, instead of return and depreciation costs, would be needed to make comparisons between TELRIC UNE rates and accounting data. Additionally, if it was ever decided to create separate wholesale and retail companies, separate data for loop versus transport costs may be needed to develop transfer prices.

With regard to Interconnection Revenue subaccounts (UNEs, Resale, Reciprocal Compensation, and Interconnection Arrangements), the Wisconsin Commission has had the following experiences. The Wisconsin Commission reclassified UNE and collocation revenues from miscellaneous revenues to local revenues in a recent rate case for a CenturyTel company.⁹ Properly classifying revenues as either local telecommunications service revenues or miscellaneous revenues is an important aspect of computing assessable revenues and resulting assessments administered by the Wisconsin Commission. Having a mix of telecommunications service revenues and nontelecommunications service revenues in the Miscellaneous Revenue category creates a need for collection of additional information for purposes of computing assessable revenues for the Wisconsin Commission's remainder and intrastate telephone relay assessments, on the one hand, and the intrastate USF assessments, on the other hand. The Wisconsin Commission also gathers assessable revenue information from other

⁹ Final Decision in dockets 2055-TR-102 and 5846-TR-102, dated September 24, 2002, concerning CenturyTel of Central Wisconsin, LLC, and Telephone USA of Wisconsin, LLC. The UNE and collocation revenue reclassification pertained to Telephone USA of Wisconsin, LLC.

telecommunications providers, including competitive local exchange carriers, via annual report filings.

In its Phase I comments, the Wisconsin Commission pointed out that pursuant to the last rewrite of the USOA, it has been the goal of the FCC to rely on the same database utilized by management rather than relying on data generated solely for submission to a regulatory agency. SBC recently provided separate reporting on revenues from UNE-P sold to competitive local exchange carriers (CLECs) and revenue from unbundled loops sold to CLECs. Accordingly, in evaluating whether to add revenue accounts it is reasonable to look at the kind of information ILEC management has available. Sources of revenue appear to be one of the more important issues in monitoring the transition to a competitive marketplace. The Wisconsin Commission would prefer greater detail than the Miscellaneous Revenue category provides.

Concerning Interconnection Expense subaccounts (UNEs, Resale, Reciprocal Compensation, and Interconnection Arrangements), the Wisconsin Commission, in its 05-US-113, Final Decision, did not impose any reporting or data retention requirements for additional expense accounts. Where the USOA is applicable to ILECs, it is not likely that an ILEC will buy unbundled access to a CLEC's network or resell a CLEC's services. Additionally, an ILEC is not likely to collocate in a CLEC's central office. Generally, the expenses associated with providing telecommunications services are joint expenses that are allocated between state and interstate jurisdictions, and regulated and nonregulated activity and cannot be directly assigned to a particular service. The one additional Interconnection Expense that appears to be relevant to ILECs is reciprocal compensation. The current USOA appears to support classification of reciprocal

compensation expense in account 6540, Access Expense. Reciprocal compensation is an expense associated with local service, whereas access expenses are not related to local service. The Wisconsin Commission would prefer a separate account or subaccount for an ILEC's reciprocal compensation paid to other entities. In addition, if the USOA is to be applied to non-ILECs, the FCC may wish to consider adoption of separate accounts or subaccounts for the other interconnection expense items.

Concerning Universal Service Support Revenues and Universal Service Support Expenses, the Wisconsin Commission supported the creation of new accounts in its Phase II comments. The Wisconsin Commission has not, in its currently-adopted USOA, required additional accounts or subaccounts, reporting requirements in the ILEC annual report, or additional data retention requirements concerning these items. However, as universal service funds expand in order to make implicit subsidies explicit in nature, information in this area may increase in importance. The Wisconsin Commission is not requesting separate accounts/subaccounts for USF-related activity at this time.

5. Whether the FCC should maintain the requirement for a comparison between net book cost and fair market value for the first \$500,000 of asset transfers.

As noted below, the Wisconsin Commission has adopted two differing dollar thresholds, \$500,000 and \$100,000, for ILECs subject to its jurisdiction.

In its docket 05-US-113, Final Decision, the Wisconsin Commission adopted the FCC's Part 32.27 rules with two exceptions: 1) it did not adopt Part 32.27(f) which exempts average schedule companies from cross-subsidy rules; and 2) it adopted a \$100,000 threshold for requiring lower of cost or fair market value (LOCOM)/higher of cost or fair market value (HOCOM) studies for ILECs other than SBC and Verizon in lieu of the FCC's \$500,000 threshold for such studies which the Wisconsin Commission

applied to SBC and Verizon. The Wisconsin Commission's cross-subsidy authority includes the enforcement of Wis. Stat. § 196.204¹⁰ requiring that a telecommunications utility may not, except for retained earnings, subsidize nonregulated activities including those of an affiliate. The Wisconsin Commission also has supervisory jurisdiction over telecommunications affiliated interest agreements pursuant to Wis. Stat. § 196.52(5)(b)¹¹ as well as enforcement authority under Wis. Stat. § 196.219¹² for violations of Wis. Stat. § 196.204. The Wisconsin Commission has expended considerable resources in

¹⁰ Wis. Stat. § 196.204 states in part:

- (1) Except for retained earnings, a telecommunications utility may not subsidize, directly or indirectly, any activity, including any activity of an affiliate, which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 or 196.203. No telecommunications utility may allocate any costs or expenses in a manner which would subsidize any activity which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 or 196.203. Except as provided in subs. (2) and (4) the commission may not allocate any revenue or expense so that a portion of a telecommunications utility's business which is fully regulated under this chapter is subsidized by any activity which is not regulated under this chapter or is partially deregulated under s. 196.194, 196.195, 196.202 or 196.203.
- (2) The commission may attribute revenues derived from the sale of directory advertising or directory publishing rights to the regulated activities of a telecommunications utility for rate making and other utility purposes.
- (3) The commission shall establish the necessary minimum accounting and reporting requirements, and structural separation requirements if necessary, for telecommunications utilities to enable it to enforce this section. For a telecommunications utility regulated under s. 196.195 or 196.196, these requirements shall at a minimum include the filing of cost support documentation demonstrating compliance with subs. (5) and (6) before the effective date of each new service, including any unbundled service element or basic network function; before any reduction in the price of a service offered to end users; and before any increase in the price of a service offered to other telecommunications providers. The commission, on its own motion or upon complaint, may order any telecommunications utility to file cost support documentation showing that a service that the utility offers or a contract that the utility has entered into under s. 196.194 complies with subs. (5) and (6).
- (4) In order to protect the public interest, the commission may allocate the earnings derived from sale of services partially deregulated under s. 196.195, 196.202 or 196.203 to the fully regulated activities of a telecommunications utility for rate-making purposes.

¹¹ Wis. Stat. § 196.52(5)(b) states:

- (b) For telecommunications utilities, the commission shall have supervisory jurisdiction over the terms and conditions of contracts and arrangements under this section as necessary to enforce ss. 196.204 and 196.219.

¹² Wis. Stat. § 196.219 states in part:

- (3) Prohibited practices. A telecommunications utility with respect to its regulated services or any other telecommunications provider with respect to its offering of local exchange services may not do any of the following:

...

- (g) Provide services, products or facilities in violation of s. 196.204.
- (h) To the extent prohibited by the federal communications commission, or by the public service commission under rules promulgated consistent with the factors under s. 196.03 (6), give preference or discriminate in the provision of services, products or facilities to an affiliate, or to the telecommunications utility's or provider's own or an affiliate's retail department that sells to consumers.

investigating cross-subsidization complaints under its jurisdiction. Each change in the FCC's rules has been carefully evaluated to ensure the Wisconsin Commission will be able to perform its statutory duties. The Wisconsin Commission did not adopt the FCC's average schedule exemption because average schedule companies are not exempt from the above statutory requirements. If the Wisconsin Commission had adopted the \$500,000 threshold for LOCOM/HOCOM studies as the threshold for all ILECs in Wisconsin, it would have effectively mooted compliance and enforcement for the vast majority of Wisconsin's ILECs, including some with relatively few access lines. The FCC should be cognizant that cross-subsidy remains an important component of regulation at the state level, and that any further FCC changes to affiliate transaction rules will be carefully evaluated by the Wisconsin Commission, and may or may not be adopted in whole or in part.

6. Whether the FCC should modify its rules to prevent ILECs from valuing the cost of certain affiliate transactions, in accordance with the floor/ceiling approach adopted in the Phase II Order.

It is true that with price-cap regulation the cost-to-rates relationship has been eliminated so there is limited potential for regulated services to be burdened with nonregulated expenses. However, it is the reverse situation that creates more concern. A carrier may cross subsidize nonregulated operations from regulated operations until there is effective competition. In this transition, price-cap regulation does provide, at times, excessive earnings which are the source of funds that can be used to cross subsidize nonregulated activity. The need for cross-subsidy regulation will not go away until competition drives earnings to competitive levels and the source of cross-subsidy funds is eliminated by market pressures. This is particularly important in the emerging advanced

services market. Cross-subsidy funds can create the deep pockets that make predatory pricing possible. In particular in Wisconsin, there is a price-floor test that is one means of limiting the potential for predatory pricing. That price-floor test may rely to a limited extent on accounting data. Appropriate affiliate transaction accounting is intended to prevent a string of transactions from hiding the full cost of providing services in order to accurately apply the price-floor test.

Asymmetrical affiliate transaction rules are needed to guard against cross-subsidies that could give affiliates a cost advantage that competitors could never achieve. The market rate reflects the terms under which a company would be expected to sell to a nonaffiliated company. The higher of cost or market assures the utility is fully compensated for work it does for an affiliate. The lower of cost or market shares economies of scale and scope when an affiliate sells to the utility and represents the cost the utility could have achieved if it produced the goods or service itself. The Wisconsin Commission supports FCC retention of asymmetrical affiliate transaction rules.

Under the floor/ceiling approach where the ILEC provides services to a nonregulated affiliate, the ILEC would be allowed to charge more than market, generating additional revenues at the expense of its affiliate. Where the affiliate provides services to the ILEC, it would be allowed to incur losses to the benefit of the ILEC. Where the ILEC is providing competitive services, competitors could possibly benefit via lower UNE rates (if not already factored into determination of maintenance and depreciation cost factors for such rates). In a nonprice-regulation setting, the floor/ceiling approach could directly benefit ratepayers currently.

7. Whether the FCC should raise the qualification threshold for using the method of prevailing price valuation of affiliate transactions, from 25 percent to 50 percent.

The Wisconsin Commission suggests that in determining whether to increase the threshold from the current 25 percent, the FCC should consider whether a lower percentage represents a significant influence over the companies' pricing policy. If the FCC determines that 25 percent of an entity's business is insufficient to impose a significant influence over the entity when setting the prices it charges to an outside third party, then the FCC could either reinstate the 50 percent threshold or set the threshold at a level where it believes that there will be significant influence on the pricing.

8. Whether the Commission should eliminate the exemption for central services organizations.

The Joint Conference study recommends that the fully allocated cost valuation for services provided by a central services organization be replaced with a LOCOM procedure. In many instances, services provided by a central services organization may be so specialized that a comparable fair market value is not available for application of a LOCOM standard. In addition, presumably the central services organization was created to achieve maximum economies of scale and scope. Examination of fair market value for such services may needlessly translate into increased costs for the ILEC, and, perhaps ultimately, ratepayers. A change to a LOCOM standard would represent a departure from the FCC's 1996 decision to apply fully distributed costs to such transactions. The FCC should carefully consider any competitive impacts, positive or negative, that might result from such a change.

9. Whether the FCC should maintain the existing reporting requirements for nonregulated-to-nonregulated affiliate transactions.

The Wisconsin Commission does not object to continuation of the existing reporting requirements for these types of transactions. Please note that the Wisconsin Commission does not have jurisdiction over nonregulated-to-nonregulated transactions. The Wisconsin Commission, however, is concerned if such transactions impact transactions with the ILEC. The Wisconsin Commission believes that since it has supervisory jurisdiction over affiliated transactions affecting the ILECs, this issue can be addressed under Wisconsin law if it becomes a problem.

10. Whether the FCC should apply the affiliate transactions rules to transactions between ILECs within the same holding company.

The Wisconsin Commission supports application of the fully distributed cost/net book value standard to transactions between two ILECs within the same holding company. A change to a LOCOM/HOCOM standard would represent a departure from a long-standing application of this standard to such transactions.

11. If the FCC chooses to collect local loop facility information as “Loop Sheath Kilometers” in the ARMIS 43-07 Infrastructure Report, whether the FCC should also reinstate the reporting of sheath kilometers.

The Wisconsin Commission notes that it currently obtains total fiber optic sheath miles information from ILECs in the ILEC annual report filed with the Wisconsin Commission. Loop Sheath Kilometer information may be more relevant to determining the costs of providing local service, but total Sheath Kilometer information may also have some merit in that it identifies the infrastructure for loop and interoffice, combined, for a particular ILEC. The FCC may wish to consider supplementation of the Loop Sheath

Kilometer reporting requirement with the former Sheath Kilometer reporting requirement in the ARMIS 43-07 report.

12. Whether the FCC should require ILECs to report data about their deployment of hybrid fiber/copper local loops in the ARMIS 43-07 Infrastructure Report.

The Wisconsin Commission also supports a requirement that the filers in the *Local Competition and Broadband Data Gathering Program* report information on hybrid fiber-copper loop interface locations and the number of customers served from these locations in addition to the xDSL customer terminations associated with hybrid fiber-copper loops and xDSL customer terminations associated with nonhybrid loops. This data will provide the Commission with a current status report on the growth of this type of technology for competitive providers within the state and allow comparison to other states.

13. Whether the FCC should apply its accounting and reporting requirements to all ILECs, as that term is defined in section 251(h) of the Act.

The Wisconsin Commission believes that accounting and reporting requirements should be applied to all ILECs, with exceptions warranted in only highly unusual circumstances.

14. Whether the FCC has the authority to adopt accounting and reporting requirements to meet the needs of state regulatory commissions and other stakeholders.

The Wisconsin Commission is concerned about both the cost and the benefits of having differences between its USOA and financial reporting requirements of other government and standard setting bodies. Conformity in reporting between the multiple users of financial information is efficient and reduces costs.¹³ There are far more similarities in the needs for financial information among the various governmental bodies

¹³ However, the Wisconsin Commission's regulatory need to enforce its Wisconsin statutory jurisdiction is paramount to conformity and may warrant departure from other agencies' requirements.

than there are differences. However, certain areas are of greater concern to telecommunications regulators than other government entities. Those discussed in these comments include cross-subsidy, depreciation, universal service support, monitoring deployment of advanced technology, supporting UNE, resale and retail prices, and assessments.

The FCC will help minimize costs for the entire industry, a benefit to all telecommunications consumers, if it maintains a system of accounts that reflects the needs of both federal and state telecommunications industry regulators. To the extent that the Wisconsin Commission must perform its statutory duties, it may establish its own accounts/subaccounts, reporting, and/or data retention requirements. The Wisconsin Commission has previously commented that the FCC should recognize that eliminating accounts or the entire USOA at a future date simply because the FCC believes it is not required for federal purposes may result in the elimination of the word “uniform” in the acronym USOA. The degree of disparity between accounts and reporting by various state commissions would likely be greater if there was not a federal USOA to rely on.

Indeed, the Wisconsin Commission does not believe that there are many accounts “used solely by the states,” because the distinction between state and federal jurisdiction has been thoroughly mixed. Under the 1996 Act, the states are “‘deputized’ federal regulator[s],” given the “gratuity [of] federal regulatory power.” *MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 344 (7th Cir. 2000). If the FCC assumes under § 252(e)(5), a state’s responsibility to arbitrate and approve an interconnection agreement, the ILEC accounts required by the state commission could be

a critical source of information for the FCC to decide costing issues presented in the arbitration. The analogy here is that of a supervising sheriff and his deputies on patrol. It would be harm for the sheriff, because he is not doing the frontline law enforcement, to conclude that his deputies do not need guns and ammunition. Similarly, USOA account data are the “guns and ammunition” for the deputized states out there enforcing the federal sheriff’s 1996 Act. It would be a mistake to conclude, without thorough and specific justification, that a particular account is used “solely by the states.”

15. What should be the effective date of certain modifications adopted in the Phase II proceeding which have been previously delayed by FCC orders.

The effective date associated with any of these items should coincide with the beginning of a calendar year, so as to minimize the regulatory burden on both ILECs and regulators.

Conclusion

The Wisconsin Commission thanks the FCC for this opportunity to provide its input on these very important issues. Cooperative federalism imposes a need for full and careful regard for the entire framework for development of competition as put in place by the Congress and state legislatures. The USOA is critical informational “glue” that helps make the cooperation workable. The needs and concerns of all stakeholders should be

carefully evaluated as the FCC determines whether any additional modifications are necessary to the uniform system of accounts.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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